

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

**CITY OF ALLEN, TEXAS *et al.*,**

**Plaintiffs,**

**v.**

**TIME WARNER CABLE TEXAS,  
LLC, d/b/a SPECTRUM AND  
CHARTER COMMUNICATIONS,**

**Defendant.**

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**Civil Action No. 6:19-CV-345**

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**NOTICE OF REMOVAL**

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Pursuant to 28 U.S.C. §§ 1332 and 1441 *et seq.*, Defendant Time Warner Cable Texas, LLC, d/b/a Spectrum and Charter Communications ("TWC"),<sup>1</sup> provides notice of removal of this civil action now pending in the 170th Judicial District Court of McLennan County, Texas, to the United States District Court for the Western District of Texas, with full reservation of any and all rights, defenses, and objections. TWC offers the following short and plain statement of the grounds for removal. 28 U.S.C. § 1446(a).

**I.  
THE STATE COURT ACTION**

1. On April 5, 2019, Plaintiffs, twenty-six Texas cities ("Cities") filed a petition against TWC in the 170th Judicial District Court of McLennan County,

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<sup>1</sup> Defendant was previously named Time Warner Cable Texas, LLC, but amended its name to Spectrum Gulf Coast, LLC on October 26, 2018 with the Public Utility Commission of Texas.

Texas, styled *City of Allen, City of Arlington, City of Austin, City of Bedford, City of Belton, City of Burleson, City of Carrollton, City of Cedar Hill, City of Colleyville, City of Coppel, City of Dalworthington Gardens, City of Euless, City of Fort Worth, City of Garland, City of Grand Prairie, City of Harker Heights, City of Hurst, City of Hutto, City of Irving, City of Killeen, City of Lewisville, City of Mesquite, City of Rockwall, City of Rowlett, City of Waco, and City of Wichita Falls, Texas v. Time Warner Cable Texas, LLC, d/b/a Spectrum and Charter Communications*, Cause No. 2018-3835-4 ("Petition"). Plaintiffs' Amended Original Petition (attached as **Exhibit D**).<sup>2</sup>

2. In the Petition, the Cities allege a number of claims and seek a variety of relief based on TWC's alleged failure correctly to calculate and pay the Cities franchise fees under TWC's state-issued cable franchise to provide cable service in their communities. The Cities allege that, at least since 2014, TWC has underpaid franchise fees owed to the Cities because TWC's has incorrectly calculated its gross revenues from cable service. The Cities allege TWC's underpayments violate Chapter 66 of the Texas Public Utility Regulatory Act ("PURA").

3. The Cities assert causes of action for: (1) Declaratory Judgment; (2) Statutory Violations of PURA; (3) "Money Had and Received"; and (4) Attorneys' Fees. The Cities seek damages in excess of \$1 million, and pre- and post-judgment interest, in addition to equitable relief.

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<sup>2</sup> Plaintiffs filed an Original Petition on October 19, 2019, but never served it.

4. On May 10, 2019, TWC accepted service of the Amended Original Petition. *See* Tex. R. Civ. P. 119 (attached as **Exhibit E**).

5. TWC removes this case to this Court on the basis of diversity jurisdiction.

## **II.**

### **PROCEDURAL REQUIREMENTS**

6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1441(a) and 1391(b), because the Cities originally filed this action in the 170th Judicial District Court of McLellan County, Texas, and a substantial part of the alleged events and/or omissions giving rise to the Cities' claims occurred in this District. 28 U.S.C. § 124(d)(4).

7. There are no other named defendants whose consent would be required for removal.

8. This Notice of Removal is filed within the time provided by 28 U.S.C. § 1446(b) because it is filed within one year of the commencement of the action and within thirty (30) days after TWC was served with a copy of the initial pleading in this action. *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999).

9. Pursuant to 28 U.S.C. § 1446(a), this Notice of Removal is accompanied by copies of the following materials:

<b>Exhibit A</b>	Civil Cover Sheet;
<b>Exhibit B</b>	Supplemental Civil Cover Sheet;
<b>Exhibit C</b>	State Court Action Docket Transactions Sheet

**Exhibit D** Plaintiffs' Amended Original Petition

**Exhibit E** Waiver of Service

10. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal will be filed with the Clerk of the 170th Judicial District Court of McLennan County, Texas, in the state-court action, and TWC will promptly serve this Notice of Removal on the Cities.

**III.**  
**BASIS FOR REMOVAL (DIVERSITY)**

11. Under 28 U.S.C. § 1332(a), the "district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs, and is between . . . citizens of different States." Because both of these requirements are met, this case is properly removed under 28 U.S.C. § 1441(b).

12. Complete diversity exists because, at the time the Cities commenced this action in the state district court, the Cities were and continue to be citizens of a different State than TWC, and neither TWC nor any of its members are citizens of Texas. *See* Pet. ¶¶ 2-13, Ex. D.

13. For purposes of diversity jurisdiction, a political subdivision of a State, including a municipal corporation, is a "citizen" of the State unless it is simply the arm or alter ego of the State. *See Moor v. Cnty. of Alameda*, 411 U.S. 693, 717-18 (1973); *City of Clarksdale v. BellSouth Telecomms., Inc.*, 428 F.3d 206, 209 n.2 (5th Cir. 2005). Here, the Petition alleges that each City is a home-rule municipality

chartered, incorporated, and situated entirely within Texas counties. Pet. ¶¶ 2-12, Ex. D.

14. Pursuant to 28 U.S.C. § 1332(c), "a corporation shall be deemed to be a citizen of every State . . . by which it has been incorporated and of the State . . . where it has its principal place of business." And "the citizenship of an LLC is determined by the citizenship of all of its members." *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1079-80 (5th Cir. 2008). Here, Spectrum Gulf Coast, LLC (formerly known as Time Warner Cable Texas, LLC), is a Delaware limited liability company with its principal place of business in St. Louis, Missouri. It is an indirect subsidiary of, and managed by, Charter Communications, Inc., which is a publicly-held corporation organized in Delaware with its principal place of business in Stamford, Connecticut. Neither the manager, nor the sole member of Spectrum Gulf Coast, LLC, or any of the members of its member, are incorporated, reside, or have a principal place of business in Texas.

15. The amount in controversy exceeds the jurisdictional threshold pursuant to 28 U.S.C. § 1332(a), because the Cities seek over \$1 million in damages. Pet. ¶¶ 15, 38, 44, Ex. D. The Cities also seek attorneys' fees, Pet. ¶¶ 39-40, 46, which are considered part of the amount in controversy for purposes of assessing diversity jurisdiction. *See White v. FCI U.S.A. Inc.*, 319 F.3d 672, 675-76 (5th Cir. 2003).

16. Because complete diversity exists between the parties, and the amount in controversy exceeds the jurisdictional minimum, this Court has jurisdiction pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. TWC's removal is proper.

**IV.**  
**CONCLUSION**

For the foregoing reasons, TWC requests this Court to remove this matter pursuant to 28 U.S.C. §1441 and to proceed as if the Petition had been originally filed in the United States District Court for the Western District of Texas.

Dated: May 31, 2019

Respectfully Submitted,

/s/ Amanda Cottrell

Amanda Cottrell

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*\*Pro hac vice* application to be filed

***Attorneys for Defendant***

***Time Warner Cable Texas, LLC d/b/a***

***Spectrum and Charter Communications***

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on May 31, 2019 a true and correct copy of the foregoing document was served on the following counsel of record as shown below:

**CERTIFIED MAIL-RETURN RECEIPT**

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